

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 93-457-T - ORDER NO. 93-1149 *jc*  
DECEMBER 20, 1993

IN RE: Application of William B. Meyer,                    ) ORDER  
Incorporated, 1421 Dave Lyle Blvd.,                    ) DENYING  
Rock Hill, SC 29730, for a Class E                    ) APPLICATION  
Certificate of Public Convenience                    )  
and Necessity.    )

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of William B. Meyer, Incorporated (Meyer or the Applicant) for a Class E Certificate of Public Convenience and Necessity authorizing it to transport property as follows:

HOUSEHOLD GOODS: Between points and places in South Carolina.

At the hearing in this matter on December 1, 1993, the Application was amended to read as follows:

HOUSEHOLD GOODS: From points and places in South Carolina, except Greenville and Spartanburg Counties, to all points and places in South Carolina.

This Application was filed pursuant to S.C. Code Ann., §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of

Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. Petitions to Intervene were filed by Carey Moving & Storage of Greenville, Inc., Carey Moving & Storage, Inc., Bland Moving & Storage Co., Inc., Arrow Moving & Storage, Inc., Austin Moving & Storage Co., Inc., and Greenville-Spartanburg Moving & Storage Co., Inc.

A hearing was held at the offices of the Commission on December 1, 1993; the Honorable Henry G. Yonce, presided. The Applicant was represented by Frank R. Ellerbe, III, Esquire; the Intervenorors were represented by Authur G. Fusco, Esquire; and the Commission Staff was represented by F. David Butler, General Counsel.

Witnesses presented were Chuck Mattes, Joe Lanford, and Sam Turrentine for the Applicant; and Allen Spatz, Bill Bland, and Todd Lamar for the Intervenorors.

After a full consideration of the testimony presented and the applicable law, the Commission makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. South Carolina Code Ann. §58-23-330 (Supp. 1992) provides as follows:

[a]n applicant applying for a certificate ... to operate as a motor vehicle common carrier may be approved upon showing ... that the applicant is fit, willing, and able to perform appropriately the proposed service. If an

intervenor shows or if the [C]ommission determines that the public convenience and necessity is being served already, the [C]ommission may deny the application.

2. 26 S.C. Regs. 103-134(1)(A)(1)(Supp. 1992) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

- (a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT, and PSC safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.
- (b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The Applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the cost associated therewith.
- (c) WILLING Having met the requirements as to 'fit and able,' the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

3. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach

Company, 260 N.C. 43, 52, 132 S.E.2d 249, 255 (1963).

4. "'Necessity' means reasonably necessary and not absolutely imperative." Id. citing State v. Southern Railway Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). "... It is necessary if it appears reasonably requisite, is suited to and tends to promote the accommodation of the public." Id.

5. "In the phrase 'public convenience and necessity' the word 'necessity' means that which is needful, essential, requisite or conducive to 'public convenience'. When more convenient and adequate service is offered to the public, it would seem that necessity requires such public convenience should be served." Atlantic Greyhound Corporation v. Commonwealth of Virginia, 196 Va. 183, 193, 83 S.E.2d 379, 384 (1954).

6. The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional services'. Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 259, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

7. Meyer's July 27, 1993 Application indicates that the Applicant is a Connecticut corporation. The testimony of the Applicant's Senior Vice President, Chuck Mattes, further indicates that Meyer has received a "satisfactory safety rating" from the

United States Department of Transportation, that there are no outstanding judgments against the Applicant, and that the Applicant is aware of, and will meet this Commission's insurance requirements. According to the Application, Meyer is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina, and, if granted authority, agrees to operate in compliance with these statutes and regulations. The financial exhibits attached to Meyer's Application and the testimony from the proceeding indicate that the Applicant is financially stable. Attachments to the Application reveal that Meyer has the necessary equipment to provide the service for which it is applying.

8. Mr. Mattes testified that William B. Meyer, Incorporated provides the movement of household goods on an interstate basis.

9. Mr. Mattes further explained that Meyer currently transports household goods on an intrastate basis under a lease agreement with Smith Drayline & Storage Co., Inc.<sup>1</sup> Under the terms of the agreement, Meyer simply agrees to lease its equipment to Smith Drayline & Storage Co., Inc. from time-to-time for the relocation of household goods within the State of South Carolina. The lease goes on the state that Meyer was making Application for South Carolina intrastate household goods authority during the interim period of time. Both Meyer and Sam Turrentine of Smith Drayline testified with regard to the lease. Both admitted under

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1. This lease agreement is dated June 25, 1993.

cross-examination that the lease in question may not have complied with all of this Commission's Regulations with regard to lease agreements. Both witnesses further testified to an incident in early 1993 in which four Meyer drivers were cited for driving with no authority on a movement of household goods from a point inside the Florence city limits, to a point outside the Florence city limits.

10. Meyer also presented the testimony of Joe Lanford, an independent consultant and former City Manager of the City of Rock Hill, who testified to the great amount of growth projected for the Rock Hill area, the inference being that the public would demand more services in the way of household goods movers. Mattes further testified that the Company has a 12,000 square foot storage building with six employees in Rock Hill. Also, Mattes states that the bulk of the work the Company desires to do is in the Rock Hill area i.e., 70% to 80% of its business. Mattes also testified that the public interest would be served by the granting of the authority.

11. Allen Spatz, General Manager of Arrow Moving & Storage, one of the Intervenor, testified in the proceeding. Among other things, Spatz testified that giving Meyer authority would have a tremendous impact on his business. Spatz states that, during the week of the hearing, Arrow conducted four intrastate moves, although it had a capacity for 20 to 25 moves. Spatz also testified that there are 22 ads for movers in the Rock Hill telephone book.

12. Bill Bland of Bland Moving & Storage testified that he has fewer employees and less equipment than five years ago because of his decrease in business. Bland further stated that nobody in the moving business is at present making a good return on his investments.

#### CONCLUSIONS OF LAW

1. Although Meyer has demonstrated that it is willing and able to provide the Class E service for which it seeks authority, this Commission holds that Meyer has not demonstrated that it is fit, as per 26 S.C. Regs. 103-134(1)(A)(1)(a)(Supp. 1992). Although the Application and testimony seem to indicate that the Applicant was familiar with all statutes and regulations governing for-hire motor carrier operations in South Carolina, and apparently agreed to operate in compliance with those statutes and regulations, it is clear upon examination of the June 25, 1993 lease between William B. Meyer, Incorporated and Smith Drayline & Storage Co., Inc. that the Applicant was not familiar with the South Carolina regulations governing leases. These are found at R.103-220 through R.103-226. The Commission specifically notes that the lease seems to basically lease authority rather than equipment and drivers, a major violation of the regulation. The Commission also notes that the lessee as per Regulations, under such a lease, shall provide for the exclusive possession, control, and use of the power units involved, and for the complete assumption of public responsibility in respect thereto for the duration of said lease. The testimony of Turrentine showed that

such was not the case under the present lease agreement. Further, R.103-222 states that the lease shall specify the power unit or units covered by the lease by designating the serial number, make and year of model. No such designations were made on the lease in question. Clearly, by the Applicant's witnesses' own admissions, Meyer was in violation of Commission regulations with regards to its leasing arrangement with Smith Drayline & Storage Co., Inc. Further, the testimony clearly showed that the Applicant attempted to complete an illegal move without authority from within the city limits of Florence to a point in Florence County. The Commission cannot tolerate violations of its regulations, and therefore, finds that the Applicant has not demonstrated its fitness to provide the requested service. Since the Commission has found that the Applicant cannot meet one of the three requirements for a Certificate, the Commission must deny the Application.

2. Considering the Commission's opinion above, the Commission takes no position on whether or not the Intervenor showed that the public convenience and necessity is being served already.

3. Because of the rulings as stated above, the Intervenor's Motion to Dismiss the Application in whole is hereby denied.

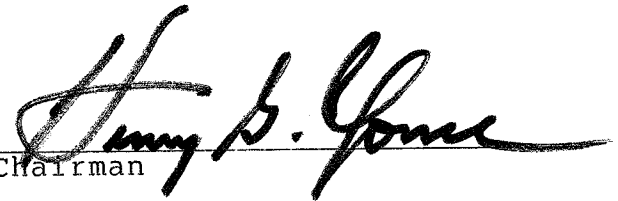
IT IS THEREFORE ORDERED THAT:

1. The Application of William B. Meyer, Incorporated for a Class E Certificate of Public Convenience and Necessity is hereby denied.

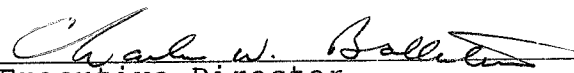


2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)